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July 22, 2022

VIA ECF

Hon. Sarah L. Cave, U.S.M.J.
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Courtroom 18A
New York, NY 10007

Re: *In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, MDL No. 2542:
Request to Strike Winn-Dixie's Improper Letter Re: C&S Discovery, ECF No. 1885

Dear Judge Cave:

The Court should strike Winn-Dixie's unauthorized "reply," which raises new arguments and new cases. ECF No. 1872 at 2 (brief ***not to exceed 3 pages***); ECF No. 1885 (submitting "reply" for a total of 6 pages of briefing). In the alternative, Keurig notes the following:

- Winn-Dixie argues C&S discovery may not be admissible as a party admission. This is not a reason to deny discovery: Information may be admissible for many reasons and "need not be admissible in evidence to be discoverable." Fed. R. Civ. P. 26(b)(1).
- Winn-Dixie cites new cases from other districts to argue it lacks the "legal right" to discovery of its assignor. ECF No. 1885 at 2. This argument is wrong both factually, ECF No. 1875-1 ¶ 13 (conveying the right to obtain discovery of C&S), and legally. *See, e.g., Royal Park v. Deutsche Bank*, 314 F.R.D. 341, 346-47 (S.D.N.Y. 2016) (regardless of assignee's rights to discovery from its assignor, it is "in a better position than its adversary" to obtain the materials, and is obliged to do so). Indeed, any other rule would unfairly allow a company to assign claims and evade discovery obligations.
- Finally, Winn-Dixie asserts that it is not pursuing a C&S liability claim. ECF No. 1885 at 1. If that is the case, the Court should strike the portion of the Complaint in which Winn-Dixie purports to bring "this action ... as the assignee of C&S." Compl. ¶¶ 24-25.

Respectfully submitted,

/s/ Zach Tschida

Zach Tschida

Cc: All counsel of record (By ECF)